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REMARKS

Claims 1-3 are pending in this application. Claims 1-3 stand rejected.

Claim Rejections under 35 U.S.C. § 103

Claims 1-3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,137,789 to Honkasalo (hereinafter "Honkasalo") in view of U.S. Patent 5,930,230 to Odenwalder et al. (hereinafter "Odenwalder").

To establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully submit that claims 1-3 are allowable as the combination of Honkasalo and Odenwalder fails to teach or suggest all the claim limitations.

Honkasalo discloses a mobile station that is able to determine a required data rate based on data buffer usage. (Abstract). The mobile station is enabled to autonomously control the data rate during an assigned period for high speed transmission. (Col. 3, lines 45-47). A high speed mobile station requests a number of parallel code channels based on the amount of data stored in a transmit data buffer. (Col. 5, lines 58-60). The base station then assigns a number of parallel code channels up to a maximum number, for a given period of time. The number of channels is also based on the current interference condition in the network. (Col. 5, lines 60-64). The time period is a network parameter and is explicitly signaled to the mobile station by the base station. (Col. 5, lines 65-67). The mobile then proceeds to transmit on all assigned code channels. (Col. 6, lines 1-2).

Odenwalder teaches a set of individual gain adjusted subscriber channels that are formed using a set of orthogonal subchannel codes having a small number of PN spreading chips per orthogonal waveform period. (Abstract) In a preferred exemplary embodiment of the invention, Odenwalder discloses that pilot data is transmitted via a first transmit channels and power control data is transmitted via a second transmit channel. The remaining two transmit channels are used for transmitting non-specified digital data including user data or signaling data, or both. (Col. 3,

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or both. (Col. 3, lines 21-26). The use four chip codes is considered optimal because four channels provides substantial flexibility for the transmission of various types of data while maintaining short code length. (Col. 5, lines 55-58).

Applicants respectfully suggest that neither Honkasalo nor Odenwalder teaches the limitation "transmitting said data at said rate during said time interval using one data transmission channel" as found in claim 1. The Examiner notes that Honkasalo does not teach or suggest that data is transmitted using one data channel and cites Odenwalder as teaching transmitting data using one data transmission channel. However, as noted above, Odenwalder is directed toward a method of transmitting data using four orthogonal data channels. Therefore, neither Honkasalo nor Odenwalder teaches the limitation "transmitting said data at said rate during said time interval using one data transmission channel".

Applicants respectfully submit that combining the teachings of Honkasalo and Odenwalder does not result in Applicants invention. As noted above, Honkasalo teaches using multiple channels to improve data transmission rates. Odenwalder discloses using four orthogonal channels for data transmission. Combining Honkasalo and Odenwalder results in a transmission using multiple orthogonal channels for data transmission. Applicants submit that the combination of Honkasalo and Odenwalder does not result in "transmitting said data at said rate during said time interval using one data transmission channel".

The Examiner cites Odenwalder at Col. 2, lines 1-13 as teaching in accordance with the IS-95 standard that data is transmitted using one data transmission channel and submits that it would have been obvious to combine Honkasalo and Odenwalder. Applicants respectfully submit that combining Honkasalo and Odenwalder as cited by the Examiner would not be obvious because the prior art references teach away from one another. Honkasalo teaches multiple data transmission channels while the cited portion of Odenwalder teaches a single data transmission channel. Applicants submit that it would not be obvious to combine references that teach diametrically opposite approaches to data transmission. Therefore, Applicant submits that claim 1 is not obvious in light of the prior art.

Claims 2 and 3 are allowable as depending directly from allowable claim 1.

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REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that the application is in condition for allowance. Accordingly, allowance of this application is earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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